SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 528

O. L. HASTINGS, ET AL.,

Petitioners,

vs.

SELBY OIL AND GAS COMPANY, ET AL.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT AND BRIEF THEREON.

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Hastings and C. P. Dodson.

INDEX.

Subject Index.

Cases Cited.

STATUTE CITED.

TEXT CITED.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT AND BRIEF THEREON.

To Said Honorable Court:

The Attorney General of the State of Texas on behalf of the Texas Railroad Commission, and O. L. Hastings and C. F. Dodson on their own behalf, pray that a Writ of Certiorari issue to review the final judgment and decision of the United States Circuit Court of Appeals for the Fifth Circuit entered on May 13, 1942 (R. 112), in Cause No. 9729 on the docket of said Court, reversing the judgment of the United States District Court for the Western District of Texas (R. 49-50), and remanding said cause for trial. Peti-

tions for rehearing were duly filed and overruled and denied, without further opinion, on June 30, 1942 (R. 121). This petition is filed pursuant to Act of February 13, 1925, and within the extended time granted by an order entered by Mr. Justice Douglas, upon application, dated September 25, 1942, on which jurisdiction rests.

Petitioners Hastings and Dodson are resident citizens of the State of Texas. The Railroad Commission of Texas is a department of executive agency of the government of the State of Texas and as such is authorized to sue and be sued. It maintains its offices and its members reside in the State of Texas.

Respondent, Selby Oil & Gas Company, is a corporation duly organized and existing under the laws of the State of Delaware and is a citizen of said State. Respondent, Lewis Production Company, is a corporation duly organized and existing under and pursuant to the laws of the State of Pennsylvania, and is a citizen of said State.

Statement of the Matters Involved.

Respondents, as plaintiffs below and as appellants in the Fifth Circuit Court of Appeals, instituted this suit by filing petition in the United States District Court for the Western District of Texas on July 17, 1939 (R. 4-13), for the purpose of setting aside a permit granted by the Railroad Commission of Texas (R. 12, 71), to Hastings and Dodson, authorizing the drilling of Well No. 2 on a 3.85-acre tract of land out of the Mary Cogswell Survey, Rusk County, Texas, and to enjoin production therefrom (R. 4-13). Jurisdiction was predicated upon (a) diversity of citizenship, and (b) the alleged violation of rights vouched respondents by the Fourteenth Amendment to the Federal Constitution. Issue joined on a trial to the Court without a jury. Respondents

offered evidence (R. 60-101), and at the close of respondents' evidence petitioners moved for judgment (R. 100) which was allowed, and they offered no evidence. Judgment was for petitioners as defendants (R. 50), and respondents gave notice of and perfected their appeal to the United States Circuit Court of Appeals for the Fifth Circuit (R. 51).

The judgment of the trial court was reversed by the Circuit Court of Appeals and the cause remanded for trial (R. 112). See *Selby Oil & Gas Company, et al.*, v. *Railroad Commission of Texas, et al.*, 128 F. (2d) 334-337, and (R. 106-112) for the Court's holding.

Petitions for rehearing were duly filed (R. 114, 117) and denied without written opinion on June 30, 1942 (R. 121).

Upon proper application, Mr. Justice Douglas of this Court entered an order under date of September 25, 1942, extending the time for filing Petition for Certiorari herein to and including November 14, 1942.

Jurisdiction.

The jurisdiction of this Court is invoked under Section 240 of the Judicial Code, as amended by the Act of February 13, 1925 (U. S. C. A., Title 28, Section 347). For the importance of the issuance of the writ see "Reasons Relied On" to follow.

Questions Presented.

1. Whether a Federal District Court may pass upon issues arising under State law in cases involving the conservation of a State's natural resources where jurisdiction is predicated in part upon the diversity of citizenship; and thus whether the Circuit Court of Appeals erred in refusing

to affirm the judgment of the Federal District Court relegating respondents to their remedy in the State courts.

2. Whether the Circuit Court of Appeals erred in directing the Federal District Court to substitute its judgment for that of a state executive agency authorized to administer a state's conservation laws when jurisdiction rests in part on diversity of citizenship.

3. Whether the respondents, Selby Oil and Gas Company and Lewis Production Company, discharged the burden of proving the illegality of the administrative order of the Texas Railroad Commission; and thus whether respondents, by their evidence, overcame the prima facie validity of the administrative order involved.

4. Whether if the Circuit Court of Appeals did not err in directing the Federal District Court to pass upon issues arising under a state's conservation laws, it nevertheless erred in declining to hold that, as a matter of law, the order involved was reasonably supported by substantial evidence.

5. Whether the Circuit Court of Appeals erred in holding that a Federal District Court is required to file findings when a motion for judgment that plaintiff had not made out a case is sustained at the conclusion of plaintiff's evidence.

Reasons Why Writ Should Be Allowed.

1. The decision of the Circuit Court of Appeals in this case is contrary to and in direct conflict with the opinions of this Court in the *Rowan* and *Nichols* cases, 310 U. S. 573, 311 U. S. 614, (On rehearing); and 311 U. S. 370.

2. The opinion of the Circuit Court of Appeals in this case (128 F. (2d) 334) is in direct conflict with each of

its opinions in *Sun Oil Company* v. *Burford*, (124 F. (2d) 467, 130 F. (2d) 10), decided at the same term of court.

3. The United States Circuit Court of Appeals for the Fifth Circuit has decided a question of procedural law of momentous importance to maintenance of harmony between state and federal courts by holding that the United States District Court was empowered to adjudicate matters involving a state's conservation of its natural resources.

4. The language of the opinion of the Circuit Court of Appeals in this case conflicts with the language of the Texas Supreme Court in *Railroad Commission* v. *Shell*, (Texas Sup. Ct.) 161 S. W. (2d) 1022, in the pronouncement of the applicable local law in cases involving the conservation of the State's natural resources.

5. Nothing is of more importance to the people of Texas than the assurance of proper adjective and substantive rules of law respecting the conservation of their great oil reserves. The three opinions of the Circuit Court of Appeals (124 F. (2d) 467, 128 F. (2d) 334, 130 F. (2d) 10), have placed these rules in utter and hopeless confusion.

Wherefore, petitioners respectfully pray that a Writ of Certiorari be issued out of and under the seal of this Honorable Court directed to the Honorable Circuit Court of Appeals for the Fifth Circuit commanding that Court to certify and send to this Court, for its review and determination, a full and complete transcript of the record and all proceedings in the cause entitled *Selby Oil & Gas Company, et al., Appellants*, v. *Railroad Commission of Texas, et al., Appellees*, numbered 9729 on the Docket of said Court to the end that the judgment and decree of said Circuit Court of Appeals in said cause may be reversed by this Honorable

Court and the judgment of the United States District Court affirmed, and that petitioners have such other and further relief as may seem meet and just.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES

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No. 528

O. L. HASTINGS, ET AL.,

Petitioners,

vs.

SELBY OIL AND GAS COMPANY, ET AL.,

Respondents.

BRIEF FOR PETITIONERS.

To the Honorable Supreme Court of the United States:

Petitioners respectfully present this their brief in support of petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

Opinion of the Court Below.

The opinion of the United States Circuit Court of Appeals for the Fifth Circuit is reported as *Selby Oil & Gas Company, et al.*, v. *Railroad Commission of Texas, et al.*, in 128 Fed. (2d) and appears in the record at pages 106-112.

Jurisdiction.

The judgment and decree to be reviewed was rendered by the Fifth Circuit Court of Appeals on May 13, 1942

(R. 112). Petitioners duly filed their respective petitions for rehearing (R. 114, 117). The petitions were each overruled, without written opinion, on June 30, 1942 (R. 121). Jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925 (28 U. S. C. A., Section 347 (a)).

The Facts.

In Texas, Jurisprudence cases such as the instant one are known as "Rule 37" cases. Rule 37 is the rule governing the spacing of wells in the oil fields of Texas promulgated by the Texas Railroad Commission. No well may be drilled in Texas unless it can be drilled in conformity to the rule; or under one of the exceptions provided in the rule "to prevent confiscation of property" or to "prevent physical waste." See *Gulf Land Company* v. *Atlantic Refining Company*, 134 Tex. 59, 131 S. W. (2d) 73, for statement of the rule.

On July 5, 1939, the Texas Railroad Commission, after notice and hearing, granted petitioners, Hastings and Dodson, permit to drill an oil well in Rusk County, Texas (R. 12, 71) under the exception to the spacing rule "to prevent confiscation of property."

Respondents, as plaintiffs in the Federal District Court, instituted suit to set aside and cancel this permit on July 17, 1939 (R. 13). Upon a trial had before the Court without a jury, the Court sustained a motion for judgment for the defendants at the conclusion of plaintiffs' evidence (R. 101-103). Petitioners, defendants below, offered no evidence. Respondents thereupon gave notice of appeal to the Circuit Court of Appeals for the Fifth Circuit (R. 51).

The judgment of the trial court was reversed by the Circuit Court of Appeals and the cause remanded for a new trial (R. 112). See *Selby Oil and Gas Company, et al.*, v.

Railroad Commission of Texas, et al., 128 Fed. (2d) 334-337, and R. 106-112, for the Court's opinion.

Petitions for rehearing were duly filed (R. 114, 117) and denied without written opinions on June 30, 1942 (R. 121).

Specification of Errors.

The Circuit Court of Appeals erred:

1. In holding that the United States District Court must determine the validity under the Texas law of an order of the Texas Railroad Commission granted after notice and hearing permitting the drilling of an oil well for the purpose of preventing "confiscation of property" or drainage of oil by other wells in the vicinity.

2. In holding that the United States District Court must exercise an "independent judgment" on the fact issue of drainage or confiscation; and thereby in holding that a Federal District Court may substitute its judgment on the fact issue of drainage for that of the Texas Railroad Commission.

3. In holding that the Federal District Court erred in holding that respondents, Selby Oil and Gas Company and Lewis Production Company, failed to discharge the burden of proving the illegality of the order of the Texas Railroad Commission permitting the drilling of the well in question; and in holding that respondents have failed, by their evidence, to overcome the prima facie validity of the order.

4. In declining to hold that as a matter of law the administrative order involved was reasonable supported by substantial evidence.

5. In holding that a Federal District Judge must file findings of fact when he sustains a motion for judgment at the conclusion of the plaintiff's evidence.

Point I.

(Germane to Specification of Errors 1 and 2, and Questions Presented 1 and 2.)

The holdings in this case by the Circuit Court of Appeals being in conflict with the opinions of this Court in the Rowan & Nichols cases, and the language of this case being in conflict with the language in the Sun-Burford case; and the questions involved being of great importance to the procedure by a State in conserving its natural resources, this Court should eliminate the conflict and make certain and definite the procedure to be followed.

Statement Under Point I.

Upon the trial of the cause in the Federal District Court one expert witness, a petroleum engineer, testified for plaintiffs, respondents herein (R. 72-99). He testified that he had made a study of the East Texas Oil Field and the lease in question (R. 72); he testified concerning the sand thickness in the area (R. 72); and that he had made calculations as to the recoverable oil beneath the lease in suit and surrounding leases (R. 73); that in making these calculations he took into consideration the sand thickness, the probable recovery factor and shrinkage due to the difference in volume of oil in the sand and the pressure and temperature existing in the sand, and the pressure and temperature existing on the surface (R. 73-74). He further estimated the probable producing life of the wells in the area (R. 74) and undertook on his estimate of reserves to allocate a certain portion of oil to each tract in the area based on acreage; he further calculated the amount of oil that would be drained by the well in suit, based upon his estimate of reserves and the production allowable (R. 77); he further detailed the density of wells

on the various tracts (R. 80-82); and the amount of past production (R. 85-86). Based upon the figures and estimates given, the witness offered his opinion that the well was not necessary to prevent drainage of oil from petitioners' lease.

On cross-examination, however, the witness admitted that it was his opinion that petitioners' tract was at a 37½% disadvantage in density of drilling when compared with the eight times area surrounding (R. 92).

Upon this evidence the trial court sustained a motion for judgment presented by the defendants holding that in his opinion he was precluded by the *Rowan* and *Nichols* cases from substituting his judgment and discretion on the question of drainage for that of the Texas Railroad Commission (R. 102-103).

Authorities Under Point I.

Railroad Commission of Texas v. *Rowan and Nichols Oil Company*, 310 U. S. 573;

Railroad Commission of Texas v. *Rowan and Nichols Oil Company* (on rehearing), 311 U. S. 614;

Railroad Commission of Texas v. *Rowan and Nichols Oil Company*, 311 U. S. 570;

Selby Oil & Gas Company v. *Railroad Commission of Texas*, 128 Fed. (2d) 10;

Railroad Commission of Texas v. *Pullman Company*, 312 U. S. 496, 61 S. Ct. 643;

Chicago v. *Fieldcrest Dairies*, — U. S. —, 62 S. Ct. 986.

Argument under Point I

In this case, the majority opinion of the Circuit Court held that the Federal District Court was empowered, and it was its consequent duty, not only to determine whether plaintiffs showed confiscation in violation of the Fourteenth

Amendment, but also to determine whether, upon their claim in their statutory suit, the attacked order of the Commission was supported by substantial evidence, and as to this that the trial court must exercise an "independent judgment." Thus the cause was reversed and remanded for a new trial. The dissenting opinion stated that this Court's opinions in the *Rowan and Nichols* cases had given rise to no little doubt and confusion as to the proper method of disposing of cases involving the conservation laws of a state, but thought the circuit court should not change face and position to that taken by it in the first *Sun-Burford* opinion until this Court had considered the point and finally clarified the issue (128 F. (2d) 337). The judge who dissented in this case specially concurred in that Court's second opinion in the *Sun-Burford* case; thus changing "face and position" before this Court had asserted any change of its holding in the *Rowan and Nichols* cases (130 F. (2d) 18).

In order to more sharply focus the alleged conflict, indulgence is prayed to quote brief excerpts from this Court's opinions in the *Rowan and Nichols* cases. In the first case, the Court said:

> "Certainly so far as the federal courts are concerned the evolution of these formulas belongs to the Commission and not to the judiciary" (310 U. S. 580).

After discussing factual matters presented, it further held that:

> "Plainly these are not issues for our arbitrament" (310 U. S. 583).

and

> "It is not for the Federal courts to supplant the Commission's judgment even in the face of convincing proof that a different result would have been better" (310 U. S. 584).

On rehearing it said that:

> "What ought not to be done by the Federal courts when the due process clause is invoked ought not to be attempted by these courts under the guise of enforcing a state statute" (311 U. S. 615).

In the second *Rowan & Nichols* case, it was said that:

> "We rejected these arguments as an attempt to substitute a judicial judgment for the expert process invented by the state in a field so peculiarly dependent on specialized judgment" (311 U. S. 573).

Further holding that:

> "• • • a state's interest in the conservation and exploitation of a primary natural resource is not to be achieved through assumption by the federal courts of powers plainly outside their province and no less plainly beyond their special competence" (311 U. S. 577).

And concluding, said:

> "In denying the petition for rehearing in earlier cases we held that *whatever rights the state statute may afford are to be pursued* in the state courts" (311 U. S. 577). (Emphasis supplied.)

In the original opinion in the first *Rowan and Nichols* case, this Court held that:

> "Except where the jurisdiction rests, as it does not here, on diversity of citizenship, the only question open to a Federal tribunal is whether the state action complained of has transgressed whatever restrictions the vague contours of the due process clause may place upon the exercise of the state's regulatory power" (311 U. S. 614).

It plainly appeared from the last quoted language that an exception was made where jurisdiction was invoked on grounds of diversity. Deleting this sentence on rehearing,

the Court added that what ought not to be done when the due process clause is invoked ought not to be attempted under the guise of enforcing a state statute, and indicated in the closing sentence that the remedy rested in the state courts.

As basis for the Circuit Court's opinion in this case, it quoted the sentence which this Court deleted from its original opinion in the first *Rowan and Nichols* case (128 F. (2d) 336), and held that since diversity was not invoked in the *Rowan and Nichols* cases, this Court could not lay down a rule applicable where jurisdiction was invoked on diversity. It appears to us that this Court deliberately deleted the exception first made in favor of diversity and laid down a rule applicable to all litigation where a state statutory remedy is invoked.

As showing conflict between this case and the *Sun-Burford* case, the Circuit Court held in this there were two suits, one invoking the due process clause, and the other a state statutory suit (128 F. (2d) 335). In the *Sun-Burford* case, the same court held in a like proceeding that there were not two suits, one "constitutional" and the other state statutory (130 F. (2d) 16). In construing this Court's opinions in the *Rowan and Nichols* cases, the Circuit Court held in the *Sun-Burford* case that "federal courts should not substitute their judgment for that of the Commission" (130 F. (2d) 14); whereas in this case the Circuit Court held that the Federal District Court could exercise "independent judgment" as to whether an order of the Commission was supported by substantial evidence (128 F. (2d) 337).

It thus plainly appears that private litigants and the Railroad Commission of Texas do not know, and cannot know, their rights in respect to this and related matters unless and until this Court eliminates the conflict and either reannounces its former holdings or recedes therefrom and restates them.

If ever there existed any doubt as to the meaning of the plain language of this Court in the *Rowan and Nichols* cases, that doubt was certainly removed by the opinions of this Court in *Railroad Commission of Texas* v. *Pullman Company*, 312 U. S. 496, 61 S. Ct. 643; and *Chicago* v. *Fieldcrest Dairies*, — U. S. —, 62 S. Ct. 986.

Thus, the Fifth Circuit Court of Appeals was right in relegating to the State courts for determination issues other than questions under the Federal Constitution in cases arising from the enforcement of a state's conservation law, (*Sun Oil Company* v. *Burford*, 124 Fed. (2d) 467); and wrong in departing from that practice in its subsequent opinions, (128 Fed. (2d) 334; 130 Fed. (2d) 10.) We pray that this Court settle the hopeless confusion now existing in the opinions of the Fifth Circuit Court of Appeals and once again set forth the law to the satisfaction of that Court that whatever rights a state statute may afford in conservation cases "are to be pursued in the state courts."

Point II.

(Germane to Specification of Errors 3 and 4, and Questions Presented 3 and 4)

The validity of the permit in suit was established as a matter of law by the testimony of respondents own witness in the trial court under State law as enunciated in the opinions and judgments of Texas Courts.

Authorities Under Point II.

Magnolia Petroleum Company v. *Railroad Commission*, (TCA, 1939) 127 S. W. (2d) 223;

Gulf Land Company v. *Atlantic Refining Company*, 134 Tex. 59, 131 S. W. (2d) 73;

Railroad Commission v. *Shell Oil Company*, 161 S. W. (2d) 1022.

Statement and Argument.

The plaintiffs offered but one expert witness. The character of testimony he gave is detailed under Point I and is adopted here. Upon cross-examination, he admitted that the tract in suit was at a 37½% disadvantage as compared with an area eight times its size surrounding it (R. 92).

The instant permit was granted as an exception to the well spacing rule "to prevent confiscation of property". As stated by the Texas Supreme Court in *Gulf Land Company* v. *Atlantic Refining Company*, 134 Tex. 59, 131 S. W. (2d) 73, "the term 'confiscation' evidently has reference to depriving the owner or lessee of a fair chance to recover the oil and gas under his land or their equivalents in kind. It is evident that the word refers principally to drainage."

And in *Magnolia Petroleum Company* v. *Railroad Commission*, (TCA, 1939) 127 S. W. (2d) 223, writ of error denied by the Supreme Court, the Court stated the method generally used in this State in determining drainage advantage or disadvantage:

> "The method generally applied in determining whether a tract in question is at a drainage disadvantage, or, to put it differently, whether the owners thereof are given an equal opportunity with lessees of the surrounding properties to recover their fair share of oil in place beneath such tract, is to compare the density and location of wells on such tract with those on the surrounding 8 times area."

The respondents own witness and the only one to testify before the District Court stated that in his opinion the tract in suit was at a density disadvantage of 37½% when compared with the eight times area surrounding. Under the local Texas law a permit must be sustained if it be reasonably supported by substantial evidence. *Railroad Com-*

mission v. *Shell Oil Company*, 161 S. W. (2d) 1022. It is obvious that the permit in suit was so supported and that the Circuit Court of Appeals erred in declining to affirm the trial court's judgment for the defendants, petitioners here, given upon motion for judgment at the conclusion of the plaintiffs' evidence and this even if the Circuit Court of Appeals was correct in its interpretation of the *Rowan and Nichols* cases.

Point III

(Germane to Specification of Errors 5 and Questions Presented 5).

The Trial Court having granted defendants' motion for judgment at the completion of plaintiffs' case was not required to file findings of fact as the question of whether or not plaintiffs' evidence was sufficient to make out a prima facie case was one of law.

Statement.

One of the reasons for reversal given by the Circuit Court of Appeals was that the trial court failed to make findings as contemplated by Rule 52 of the Rules of Civil Procedure, 28 U. S. C. A., following Section 723c.

It will be recalled that in this case the trial court sustained defendants' motion for judgment at the conclusion of plaintiffs' evidence and that defendants offered no evidence.

Authorities.

18 Hughes Federal Practice, Sections 24531-24572;

City of St. Louis v. *Western Union Telegraph Company*, 148 U. S. 92, 37 L. Ed. 380;

McLaughlin v. *Pacific Lumber Company*, 293 U. S. 351, 79 L. Ed. 423;

Coler v. *City of Cleburne*, 131 U. S. 162, 9 S. C. 720;
Dunsmuir v. *Scott*, 217 Fed. 200;
George A. Fuller Company v. *Brown*, 15 F. (2d) 672;
Griffin v. *Thompson*, 10 F. (2d) 127;
Thomas v. *Peyser*, 118 F. (2d) 369;
Tulsa City Lines v. *Maims*, (C. C. A. Okl.-1940) 107 F. (2d) 377;
Article 6049c, Vernon's Annotated Texas Civil Statutes.

Under the federal statutes prior to the adoption of the rules of practice and procedure the option lay with the trial court in a non-jury case to make special or general findings. U. S. C., Title 28, Sections 773, 875. However, numerous decisions announced that unless special findings were made an appellate court would not look at the evidence to determine its sufficiency to support the judgment or a ruling of the Court. Rule 52 (a) of the rules governing practice and procedure in the Federal Courts, provides, in part:

> "In all actions tried upon the facts without a jury, the court shall find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of facts and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review."

Other than to make special findings obligatory, rather than optional, and to obviate the necessity of counsel requesting special findings, we do not understand that the new Rule 52 has changed the prior practice. See *1B Hughes Federal Practice*, Sections 24531-24572.

Under the prior practice there existed one well recognized instance when the appellate court would examine the evi-

dence even in the absence of special findings and that was where a party moved for a judgment in his favor at the conclusion of the opposing party's evidence or upon the whole case. The question there being one of law rather than fact, the appellate court would examine the evidence to determine the propriety of the Court's ruling. *City of St. Louis* v. *Western Union Telegraph Company*, 148 U. S. 92, 37 L. Ed. 380; *McLaughlin* v. *Pacific Lumber Company*, 293 U. S. 351, 79 L. Ed. 423; *Coler* v. *City of Cleburne*, 131 U. S. 162, 9 S. C. 720; *Dunsmuir* v. *Scott*, 217 Fed. 200; *George A. Fuller Company* v. *Brown*, 15 F. (2d) 672. As the Court said in *Griffin* v. *Thompson*, 10 F. (2d) 127:

> "Error is also assigned to refusal of the court to make special findings of fact and of law. This was within the discretion of the court and not error, but, as a motion for judgment was made by the defendant the whole case is before us on the facts and law."

In the present case the court sustained defendants' motion for judgment at the conclusion of the plaintiffs' evidence and it was plainly the duty of the Circuit Court to look at the evidence in order to pass upon the Court's ruling that the plaintiff had failed to establish a prima facie case.

In *Thomas* v. *Peyser*, 118 F. (2d) 369, the Court held Rule 52 (a) inapplicable where facts are admitted by the defendant filing a motion to dismiss, saying:

> "Obviously there need be no fact findings where facts are not in issue. The only issues determined by the trial court were questions of law."

The question presented in the instant case by the Court's ruling upon the defendants' motion for judgment at the conclusion of the plaintiffs' evidence being one of law, Rule 52 (a) is inapplicable and the Court erred in declining to pass upon the question properly presented to it.

Moreover, even if we should be in error and it should be held that Rule 52 (a) must be complied with when a motion for judgment is made by a defendant at the conclusion of the plaintiffs' case and is sustained by the trial court; nevertheless, the purpose of the rule is to aid the reviewing court by according it a clear understanding of the basis of the decision of the trial court. *Tulsa City Lines* v. *Maims*, (C. C. A. Okla., 1940) 107 F. (2d) 377. Surely in the instant case the Court properly understood the basis of the trial court's decision.

Conclusion and Prayer.

We respectfully submit that the opinion of the Circuit Court is squarely in conflict with those of this Court in the Rowan and Nichols cases; that the Circuit Court was unwarranted in departing from its recent decision in the Sun Oil Company case; and that even if the Court was warranted in its change of opinion, nevertheless the respondents wholly failed to establish a case under the Fourteenth Amendment to the Federal Constitution or under Section 8 of Article 6049c, Vernon's Annotated Texas Civil Statutes.*

This case presents important questions pertaining to the jurisdiction and practice of Federal Courts which should be settled by this Court in order to avoid the utmost confusion

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* "Any interested person affected by the conservation laws of this State relating to crude petroleum oil or natural gas, and the waste thereof, including this Act, or by any rule, regulation or order made or promulgated by the Commission thereunder, and who may be dissatisfied therewith, shall have the right to file a suit in a Court of competent jurisdiction in Travis County, Texas, and not elsewhere, against the Commission, or the members thereof, as defendants, to test the validity of said laws, rules, regulations or orders. Such suit shall be advanced for trial and be determined as expeditiously as possible and no postponement thereof or continuance shall be granted except for reasons deemed imperative by the Court. In all such trials, the burden of proof shall be upon the party complaining of such rule, law, regulation or order; and such laws, rule, regulation or order so complained of shall be deemed prima facie valid."

which has arisen by virtue of the conflicting decisions of the Circuit Court of Appeals. For reasons stated, therefore, it is respectfully submitted that this petition for Writ of Certiorari be granted.

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